



CITY OF MANCHESTER, NH
ZONING BOARD OF ADJUSTMENT
ONE CITY HALL PLAZA
MANCHESTER, NH 03101-2097
TEL: (603) 624-6475
FAX: (603) 624-6324
www.ManchesterNH.gov
e-mail: PCD@ManchesterNH.gov

GENERAL INFORMATION TO APPLICANTS ON THE MANCHESTER, NH ZBA

Everyone has the right to appeal land use decisions through the Zoning Board of Adjustment. If you are considering such an appeal, you should be aware of the functions of the ZBA and the main issues that the ZBA is required by law to consider in reaching their decision. The Manchester Zoning Board of Adjustment is authorized by State Statute and established by Ordinance. The ZBA has the authority to act in separate and distinct categories, which are an **Administrative Appeal**, a **Special Exception**, a **Variance**, an **Equitable Waiver of Dimensional Requirements**, an **Appeal of the Planning Board's Decision** as it relates to the Zoning Ordinance, an Appeal of the **Heritage Commission's Decision** and other appeals as set forth in the Zoning Ordinance of the City of Manchester, NH.

When an applicant is denied a building permit and considers an appeal to the ZBA, he/she must obtain the necessary paperwork as supplied by Building Regulations. The completed paperwork, along with supportive documents is to be returned to that department. The department would then review the plan whereupon the violations would be cited and a denial letter typed. The applicant will return to the department to sign the denial letter and submit the required fee. Any deviation in the appeal application, plot plan or public testimony than what is presented to the Board could be a basis for denial.

The ZBA normally, with few exceptions, holds their public hearings and business meetings on the second Thursday of each month in the Aldermanic Chambers in City Hall beginning at 6:00 PM. These hearings are public, with all testimony and discussion recorded. Prior public notification to the applicant and the abutters is sent stating the place, date and time of the hearing. The cases are heard in the order that they are received in the department with a few exceptions made by the Chairman. The Board usually renders a decision upon sufficient testimony by all parties concerned.

The Board is required by law to consider the five-part criteria in the granting of a **Variance**. It is the responsibility of the petitioner to provide reasonable, factual proof so that each of the criteria is met. The first criterion is that "Granting of the variance would not be contrary to the public interest." The second criterion is "Granting the variance, the use would not be contrary to the Spirit of the Ordinance." The intent of the legislative body that originally passed the Ordinance must be considered. They do this by lessening congestion in the streets, securing safety from fires, panic and other dangers and providing for adequate air and light. The third criterion is "Substantial Justice would be done". The fourth criterion is "There would be no diminution in value to the surrounding property values". The fifth criterion is "Literal enforcement of the provisions of the ordinance would result in unnecessary hardship because of the special conditions of the property that distinguish it from other properties in the area. (a) There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property. (b) The proposed use is a reasonable one." (RSA 674:33, Rev. 1/01/10).

(As a result of this change in State Statute, there is no longer the distinction between a "use" variance and an "area" variance).

A **Special Exception** is a use of the land or building that is permitted, subject to specific conditions set forth in the Ordinance. The site must be an appropriate location for the use or structure. The use will not adversely affect the neighborhood. There will be no nuisance or serious hazard to vehicles or pedestrians. Lastly, adequate and appropriate facilities are sufficient to insure proper operation of the proposed use, structure or condition.

An **Administrative Appeal** is an appeal from the written administrative decision involving interpretation or application of the Zoning Ordinance.

An **Equitable Waiver of Dimensional Requirements** shall be granted only from the physical layout, mathematical or dimensional requirements and not from use restrictions. The burden of proof on the property owner is to prove that a violation was discovered after the structure was substantially completed, an error was made in calculations, to correct it would outweigh any public benefit, it would not cause a public or private nuisance nor would it diminish surrounding property values. The owner may separately demonstrate that the violation existed for 10 years or more.

Cases before the ZBA may be tabled for additional information or for review and recommendation from other departments before a decision is rendered. The ZBA has the right to attach stipulations or conditions that must be adhered to; otherwise the Variance for Special Exception may be revoked. Notice of the Board's Decisions will be made available for public inspection within 72 hours. When the Board grants the petitioner's request, the building permit must be obtained within **one year**, even if Planning Board action is required as well. If the building permit is not obtained, the variance will expire.

Whether granted or denied, the petitioner, an abutter or any person aggrieved by the decision of the Board has **30 days** to request a rehearing. The first day starts with the day after the hearing. To be considered for a rehearing, the appeal must introduce new evidence that is to be considered or a change in circumstances that considerably alters the case. If the request for a rehearing is denied, the applicant may appeal the Board's decision to Superior Court within **30 days**.

When a property has had a denial by the Zoning Board of Adjustment, any new appeal must be reviewed by the Board under their **Subsequent Application** policy. The Board will make the determination whether to hear the case based on its proposed use, circumstances or newly provided evidence.

The Zoning Board of Adjustment's Agendas and Decisions can be found on the City's Website at www.ManchesterNH.gov/PCD.

APPEALS TO THE ZONING BOARD OF ADJUSTMENT

In addition to the **10 copies** of the Application (Variance, Special Exception or Equitable Waiver) the following information must be provided. Incomplete packets may delay the case.

1. **10 copies** of a plot plan or site plan drawn to scale, showing lot, house, parking (8.5 x 18.5) 2 spaces per unit, setbacks, driveways, streets. (preferably no larger than 11" x 17" - NO Mylars)
2. **1 copy** of the deed with description of lot. (Deed prior to 1965 if a new building or a subdivision.)
3. **10 copies** of the GIS map showing surrounding neighborhood, **1 copy** of the current property card which you may purchase from the Assessor's Office, located at One City Hall Plaza-West Wing, Manchester, NH 03101.
4. **10 copies** of the floor plans, models or pictures of the proposal. Elevations are required for any new construction (including additions).
5. **1** signed affidavit from the owner **if you do not own the property.**
6. **If you are planning to erect a sign,** you must submit **10 copies** of a sketch showing the dimensions that include the overall height and location on the site plan.

NOTE: You must apply for a variance **in person** in order to sign the Zoning brief.

NOTE: Fees are as follows:

Application Fee - \$25
Change of use - \$350
Multi-use variance - \$350
Planned developments - \$350
Nonconforming subdivisions - \$350
Unaccepted way - \$350
All others (variances, special exceptions, administrative appeals, equitable waivers and rehearings) -
\$200
Subsequent application - \$35.00
Request for Rehearings - \$35.00

*PLEASE NOTE: In the event that the Board of Adjustment grants your appeal, you must then make application for a building permit through the Planning & Community Development Department in order to complete the process. This application must be made **within ONE YEAR from the date that the appeal is granted.**

NOTE: The footings of all new buildings and additions shall be certified by a NH Registered Land Surveyor and a **copy of the survey submitted to the Planning & Community Development Department prior to commencing construction.**



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VARIANCE

Complete the following and attach any supplemental material that would support your appeal.

Property Location: _____

Owner's Name: _____

Owner's Address: _____

Phone Number: _____

1. The variance would not be contrary to the public interest.

2. The variance would not be contrary to the spirit of the ordinance.

3. By granting the variance, substantial Justice would be done.

4. By granting the variance, surrounding property values would not be diminished:

5. Literal enforcement of the provisions of the ordinance would result in unnecessary hardship because of the special conditions of the property that distinguish it from other properties in the area.

- a. There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property.
- b. The proposed use is a reasonable one.

Printed Name: _____

Signature: _____

Date: _____



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SPECIAL EXCEPTION

Complete the following and attach any other supplemental material that would support your appeal.

Property location: _____

Owner's Name: _____

Owner's Address: _____

Phone No. _____

1. The specific site is an appropriate location for the use or structure because: _____

2. The use developed would not adversely affect the neighborhood because: _____

3. There would be no undue nuisance or serious hazard to vehicles or pedestrians because: _____

4. Adequate and appropriate facilities are sufficient to insure the proper operation of the proposed use, structure or condition: _____

Printed Name: _____

Signature: _____

Date: _____



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AFFIDAVIT FORM

I, the undersigned, owner of the property at _____
hereby verify that I have authorized _____ to apply to
the Planning & Community Development Department of the City of Manchester, New Hampshire, for the
following:

Printed Name: _____
Signature of Owner _____
Address of Owner _____
Date _____